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July 28, 1997

REPLY TO:

\* ALSO MEMBER VIRGINIA BAR  
\*\* ALSO MEMBER GEORGIA BAR  
\*\*\* ALSO MEMBER WEST VIRGINIA BAR

The Honorable Charles W. Ballentine  
Executive Director  
Public Service Commission of SC  
111 Doctor's Circle  
Columbia, South Carolina 29203



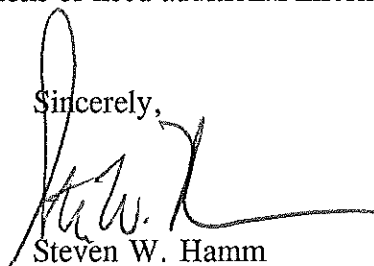
RE: Blue Ridge Electric Cooperative, Inc., vs. Duke Power Company, n/k/a Duke  
Power, a division of Duke Energy Corporation  
Docket No.: 97-153-E

Dear Mr. Ballentine:

Enclosed for filing, please find the original plus ten (10) copies of Blue Ridge Electric Cooperative's response to Respondent's Motion to Dismiss and/or Motion for Summary Judgment. By copy of this letter, I am serving counsel for the Respondent.

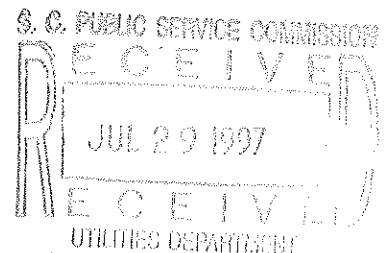
Should you have any questions or need additional information, please feel free to contact me.

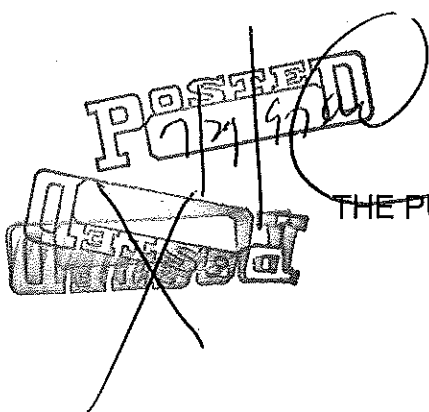
Sincerely,

  
Steven W. Hamm

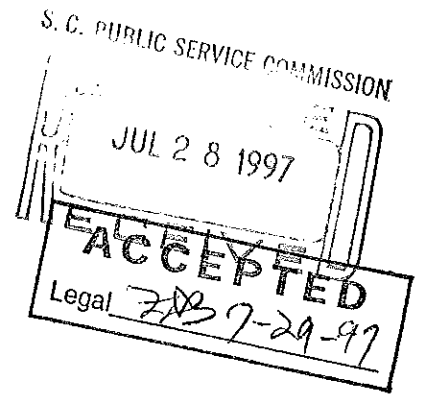
SWH:lhb  
Enclosure(s)

cc: The Honorable Gary E. Walsh (w/enclosure)  
F. David Butler, Esquire (w/enclosure)  
Richard L. Whitt, Esquire (w/enclosure)





BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 97-153-E

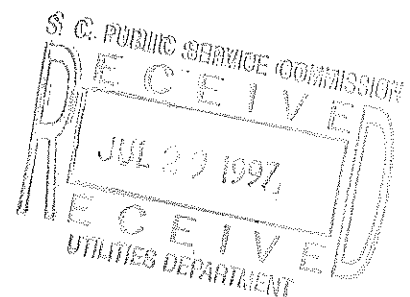


IN RE: Blue Ridge Electric Cooperative, Inc.)  
Petitioner, )  
vs. )  
Duke Power Company, )  
n/k/a Duke Power, a division of )  
Duke Energy Corporation, )  
Respondent. )

**PETITIONER'S  
RETURN TO  
RESPONDENT'S  
MOTION TO DISMISS  
AND/OR MOTION FOR  
SUMMARY JUDGMENT**

Petitioner Blue Ridge Electric Cooperative, Inc., (hereinafter "Blue Ridge"), responds to the Motion to Dismiss and/or Motion for Summary Judgment of Respondent Duke Power Company, n/k/a Duke Power, a division of Duke Energy Corporation, (hereinafter, "Duke") as follows:

Blue Ridge, Duke, and Haywood Electric Membership Corporation entered into a Joint Application requesting that the South Carolina Public Service Commission assign service areas in Oconee County, pursuant to the Commission's authority under the 1969 Territorial Assignment Act. In response, the Public Service Commission issued its Order No. 16,394 on September 5, 1972, stating:



"The verified Application and attached map, Exhibit A, indicate the areas in Oconee County to be assigned to each applicant and the areas to be left unassigned...NOW THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the Application is approved, and the areas in Oconee County situated more than three hundred (300') feet from the lines of any electric supplier and outside the corporate limits of any municipality are assigned to the respective applicants or designated unassigned, all as shown on Exhibit A incorporated herein by reference and made a part of this Order as fully as if set out herein".

Exhibit A depicted the assignment of territory within Oconee County and showed the location of various lines of each electric supplier that was a party to that Order. However, there is no designation on the map or within the Order as to whether these were transmission or distribution lines. The determination of whether a line is a transmission or distribution line is subject to the requirements and standards contained within the 1969 Territorial Assignment Act, and until otherwise proven the presumption is that a line is a transmission line.

As a threshold matter, Petitioner contends that Respondent's Motion cannot be granted as the 44kv line in question in the current matter was not constructed until 1974, and therefore could not have been subject to any prior adjudication or alleged agreement between the parties incorporated within the 1972 Order. As set forth within the attached Affidavit of Allen Blackmon, the line shown on the Exhibit A map is not the same 44kv line that Duke is attempting to

utilize to serve the Nason Plant. Duke cannot reasonably make the argument that issues regarding a line that did not exist at the time of the Commission's 1972 Order are res judicata based upon that Order.

In addition, Petitioner strongly disagrees with Duke's contention that the parties to the Application intended and agreed to protect corridors around the lines shown on Exhibit A from assignment. As previously stated, there is no indication within the Application, Order, or Exhibit A that the lines shown on Exhibit A were distribution lines or that the parties intended to leave 300' corridors around these lines unassigned. Petitioner denies that the Public Service Commission and the parties intended to replace the Territorial Assignment Act provisions regarding corridor rights with this language. To accept this construction as advocated by Duke would effectively destroy the intent and meaning of the Territorial Assignment Act, which specifically addressed when corridor rights attached to certain distribution lines, and further is in contravention of the designation of territory shown on Exhibit A.

When Blue Ridge entered into this Application, it was not their opinion nor was it stated by any party that the area around the lines shown on Exhibit A was to be unassigned in direct conflict with the corridor rights provisions established within the Territorial Assignment Act. Corridor rights within 300 feet of distribution lines are specifically addressed within the 1969 Territorial Assignment Act, and the ability to assert corridor rights is exhaustively and completely addressed within the Act. Because these rights were established by

statute, there was no need to address service in this area within the Order. The question of whether lines were distribution or transmission lines was left for review according to the requirements set forth within the Territorial Assignment Act, at the time the question arose. Based upon information and belief, this is standard language utilized by the Public Service Commission in all of its Orders addressing territorial assignment on a county by county basis. To accept Duke's characterization of this language would open the door to a multitude of actions by suppliers across the State asserting newly-claimed corridor rights. There is no finding or clearly stated agreement between the parties to abrogate these provisions of the Act. Blue Ridge never agreed to allow Duke to recharacterize its lines so as to give Duke a 10-mile long corridor deep within Blue Ridge assignment territory. It is unreasonable to construe this Order to displace the provisions of the 1969 Act upon implication only. Therefore, Duke's position regarding the interpretation of this clause is untenable.

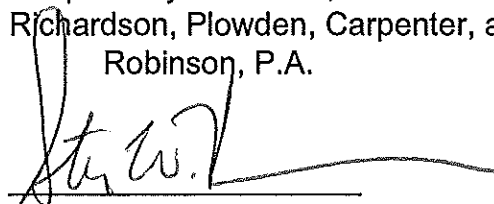
Also, as demonstrated on Exhibit A, a specific graphic was assigned to represent the territory of each electrical supplier and to represent unassigned territory. The area within 300' from the lines of the suppliers is not designated as unassigned on this map. The line in question is not surrounded by a white, non-marked strip on either side that would indicate that this area was designated as unassigned. It would be expected that these areas would be shown on the map as unassigned territory if Duke's allegations were correct. This glaring inconsistency between the map's designation of assigned and unassigned

territory and Duke's contentions regarding this portion of the Order mandates a determination that the parties did not agree to leave these corridors unassigned.

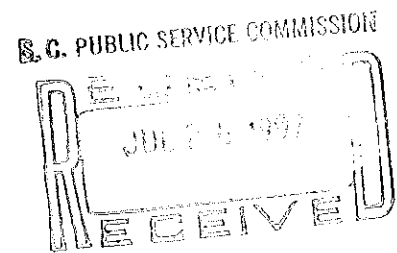
Duke is attempting to utilize the existence of a transmission line constructed in 1974 to establish corridor right claims in 1997. The 44kv line which Duke is asserting provides them with the ability to serve Nason was not constructed until after the 1972 Order. The parties made no agreement to supplant the 1969 Territorial Assignment Act provisions regarding corridor rights. There is therefore no basis upon which Duke's claim to rights to serve the Nason plant initially requiring service in May 1997 can be sustained.

As such, Petitioner contends that Respondent is not entitled to an Order dismissing its Petition or granting summary judgment, as the matter and line at issue were not the subject of Order No. 16,394 and have therefore not previously been litigated; and because the Order did not exempt areas 300' from lines shown on Exhibit A from assignment. Petitioner therefore respectfully requests that Respondent's Motion to Dismiss and/or Motion for Summary Judgment be denied.

Respectfully submitted,  
Richardson, Plowden, Carpenter, and  
Robinson, P.A.

A handwritten signature in black ink, appearing to read "Steven W. Hamm", is written over a horizontal line.

Steven W. Hamm  
Mary Sowell League  
1600 Marion Street  
P.O. Drawer 7788  
Columbia, South Carolina 29201  
(803) 771-4400



BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA

DOCKET NO.: 97-153-E

IN RE:	Blue Ridge Electric Cooperative, Inc.,	)	
		)	
	Petitioner,	)	
		)	
	vs.	)	<b>Affidavit of</b>
		)	<b>Alan Blackmon</b>
		)	
	Duke Power Company,	)	
	n/k/a Duke Power, a division of	)	
	Duke Energy Corporation,	)	
		)	
	<u>Respondent.</u>	)	


THE UNDERSIGNED, having first been duly sworn, deposes and states as follows:

1. That he is the Manager of Engineering for Blue Ridge Electric Cooperative.
2. That he has reviewed the Motion to Dismiss and/or Motion for Summary Judgment filed by Duke Power, and also reviewed the PSC Order No. 16,394 and the accompanying map referenced within that Motion.
3. That he is familiar with the Duke transmission lines in Oconee County between Walhalla and Westminster referenced within that Order and currently existing.
4. That the line represented on the map known as Exhibit A is a steel tower line that was in existence in 1969. This tower held a 44kv transmission line and a

100kv transmission line at the time Exhibit A was prepared. The 44kv transmission line was upgraded to a second 100kv transmission line in 1974, and this tower presently holds two 100kv transmission lines.

5. The existing 44kv transmission line was constructed in 1974 based on a review of the birthmarks on the poles, and is a completely different line from the 44kv transmission line represented on Exhibit A.

FURTHER AFFIANT SAYETH NOT.

  
Alan Blackmon

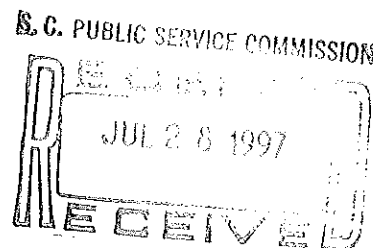
SWORN to and subscribed  
before me this 24 day of  
July, 1997.

  
Notary Public for South Carolina

My Commission expires: 2-18-2004



BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 97-153-E

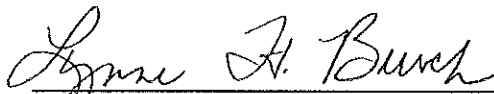


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Duke Power Company, )  
n/k/a Duke Power, a division of )  
Duke Energy Corporation, )  
 )  
Respondent. )  
\_\_\_\_\_ )

CERTIFICATE OF SERVICE

I, the undersigned, an employee of Richardson, Plowden, Carpenter & Robinson, P.A., do hereby certify that I have served the foregoing Petitioner's response to Respondent's Motion to Dismiss and/or Motion for Summary Judgment, by causing a copy to be hand-delivered to the following individual:

Richard L. Whitt, Esquire  
Austin, Lewis & Rogers  
Post Office Box 11716  
1310 Lady Street  
Columbia, South Carolina 29211

  
Lynne H. Burch

July 28, 1997

Columbia, South Carolina